DEVELOPMENT DEPARTMENT

G.O. No. 724, 16th February 1951

Labour—Disputes—Dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore—Award of the Industrial Tribunal, Coimbatore—Published.

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BEFORE THE INDUSTRIAL TRIBUNAL, COIMBATORE.

PRESENT:

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Industrial Tribunal.

INDUSTRIAL DISPUTE No. 8-C OF 1950.

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Sri B. S. Bhaskar Rai, B.A., B.L., Advocate and President, the Commonwealth Tile Workers' Union, Mangalore—*For the workers.*

AWARD.

Reference for adjudication of the question of the right of Sri Babu Shetty and Sri Ganappa, two employees of the Commonwealth Tile Factory, Kudroli, Mangalore, for reinstatement or gratuity.

1. The statement of the two workmen is to the effect that they have put in services respectively of 16 and 28 years, that there was no question of filing or sending any leave application because such was not the practice; the fact that they had to submit such applications was not intimated to them; that even to this day leave applications are not insisted upon. However, in fact they sent word through friends regarding their illness. The Standing Orders were not given to them or brought to their knowledge. They have been dismissed merely because they were office-bearers of the Union.

2. The employer's statement runs that the two workers were discharged from service with effect from 17th March 1950, for absence without leave; they were given an adequate opportunity to submit their explanation; punishment was awarded only after due enquiry. The Company's Standing Orders have been followed.

3. The point for consideration is that set out in the reference, viz., are Babu Shetty and Ganappa entitled to be reinstated in service or eligible for gratuity equivalent to 15 days' wages or to any lesser amount for each year of service?

4. Babu Shetty and Ganappa have examined themselves while on behalf of the employer three persons have been examined including the General Manager. The two workmen have pleaded that because of illness they did not attend the factory and claim to have sent word through their friends about their illness to the factory. They plead also that written applications for leave are not necessary and that there is no rule to that effect; if there is a rule it is not insisted on. They further allege that if there are Standing Orders justifying their dismissal, they were unaware of the same.

5. It has been proved that Babu Shetty was Secretary of the Labour Union during the strike which preceded his dismissal while Ganappa was an active member of the Union and they were always together. Thus if misconduct on their part, i.e., continuous absence without leave is not proved it has to be held that there is room for suspicion of victimisation.

6. That the two workmen were absent without leave during the same period is not in dispute. They contend that it is not usual to apply for leave. That this is not correct is clear from the fact that the employer has produced through M.W. 3 a whole file of leave applications ranging from 13th August 1948 to 31st May 1950. Neither side was anxious that the same should be exhibited. What is even more to the point is that Babu Shetty, the erstwhile Secretary has himself applied on 23rd December 1949 for leave, i.e., some time prior to the absence without leave which resulted in his dismissal. That application of his is entirely in handwriting in pencil in the local language and is Exhibit M-11. It was even then translated and put up before the Group Manager, Mr. Fowler who directed him to report himself to the Company's Doctor for treatment. Thus it will not avail Babu Shetty or Ganappa to say that he was not aware of other workmen submitting leave applications or that he did not know that he had to apply in writing for leave.

7. Rule 22 (*f*) of the Standing Orders for operatives is relied on in support of the present dismissal. It reads so far as it may be necessary for the disposal of the instant case thus and the book has been filed as Exhibit M-12 in connected Industrial Dispute No. 8 of 1950.

"A Workman may be dismissed without notice if he is found to be guilty of misconduct. No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. In awarding punishment under this Standing Order, the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order made by the Manager shall be supplied to the workman concerned. The following acts or omissions will be treated as misconduct.

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22 (*f*). Habitual absence without leave or absence without leave for more than three consecutive working days without sufficient cause."

8. That Babu Shetty was absent without leave from 28th February to 15th March 1950, i.e., for more than three consecutive days is not disputed; likewise Ganappa from 22nd February to 14th March 1950. Absence thus without leave for more than three consecutive working days is admitted. The next question is whether the absence was without sufficient cause.

9. The only cause now alleged in common is illness and there is absolutely no proof thereof. Not even corroborative oral testimony is forthcoming. What is definitely against the allegation of illness is that on 6th March 1950 during the period of continued absence, both these workmen were hale and healthy enough to walk to the factory to receive their pay for February. Even thereafter they both continued absent. They were not ill to receive their salary but they affected illness for a long period both before and after that date on which they received their salary. Thus sufficient cause is not made out.

10. They were given due notice to explain and their explanations have been recorded in Exhibits M-2 and M-3 by the then Group Manager whose interpreter then was Mr. Karkada, M.W. 1 while the Head Maistry, M.W. 2 was also present. Ganappa then said that he was attended to by some outside native doctor whose name, however, he did not know. He said that he sent word through his wife—though his statement mentions it was a friend—to the maistry and though his wife is still a work-woman in this factory she has not now been examined. Babu Shetty's statement on 16th March 1950 was to the effect that he did not know it was necessary to send a leave application. He did not inform anyone when he was ill and does not cite as a witness the friend through whom according to his written statement he sent word to the factory about his illness. In all these circumstances of this case, there has been absolutely no justification

for the long absence without leave of these two prominent members of the Labour Union. Ganappa had been earlier suspended on 13th May 1949 for inciting on 7th May 1949 whilst on the premises operatives to strike work. He was suspended for 2¼ days. He was warned then that any repetition of misconduct will ensure dismissal. Both these workmen have merely abused their position as office-bearers of the Union, and have attempted to set a bad example to the other workmen thereby undermining discipline and creating a set-back for production. The dismissal in both these cases is clearly correct and I so find. They are not entitled to reinstatement.

11. Babu Shetty is now running a small hotel and Ganappa is working in another tile factory. The issue raises the question of the gratuity that they may be entitled to. Ganappa has put in much more than 22 years of service and a joint statement Exhibit M-12 records the same. Exhibit M-12 is the result of the General Manager's astonishingly thorough and perfectly fair investigation of his registers maintained and preserved with astounding regularity during all these long years. There is a break in Ganappa's service between 27th March 1935 and 1st June of that year but it is nothing serious and should be condoned in a case of this type. The employer urges that under the rules now in operation of which a copy has been available the grant of gratuity is purely discretionary with his Board in England and is to be awarded only in the case of persons with a record of good conduct and satisfactory service. He urges that there is no justification for grant of gratuity in a case of dismissal for misconduct even though the workman has served for very much more than 22 years. Though these contentions are *prima facie* acceptable and without desiring to create a precedent and solely on the facts of this case I am inclined to award only Ganappa gratuity at the rate of 2 rupees per year of service plus 100 per cent dearness allowance as he is an employee about 46 years of age. Regarding Babu Shetty, his period of service is only about 13 years and he is not entitled to any gratuity and I so find. The gratuity payable to Ganappa will be paid within three months of the publication of this award.

12. There will be no order as to costs.

Coimbatore, 3rd February 1951.

P. V. Krishnaswami,
Industrial Tribunal.

Order—No. 724, Development, dated 16th February 1951.

Whereas the award of the Industrial Tribunal, Coimbatore in respect of the industrial dispute between the workers and the management of the Commanwealth Tile Factory, Kudroli, Mangalore, has been received;

Now, therefore, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), His Excellency the Governor of Madras hereby directs that the said award be published in the *Fort St. George Gazette*.

(By order of His Excellency the Governor)

J. M. Lobo Prabhu,
Secretary to Government.

To the Superintendent, Government Press (for publication in the *Fort. St. George Gazette*).
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" District Magistrate, South Kanara.
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1. The statement of the two workmen is to the effect that they have put in services respectively of 16 and 28 years, that there was no question of filing or sending any leave application because such was not the practice; the fact that they had to submit such applications was not intimated to them; that even to this day leave applications are not insisted upon. However, in fact they sent word through friends regarding their illness. The Standing Orders were not given to them or brought to their knowledge. They have been dismissed merely because they were office-bearers of the Union.

2. The employer's statement runs that the two workers were discharged from service with effect from 17th March 1950, for absence without leave; they were given an adequate opportunity to submit their explanation; punishment was awarded only after due enquiry. The Company's Standing Orders have been followed.

3. The point for consideration is that set out in the reference, viz., are Babu Shetty and Ganappa entitled to be reinstated in service or eligible for gratuity equivalent to 15 days' wages or to any lesser amount for each year of service?

4. Babu Shetty and Ganappa have examined themselves while on behalf of the employer three persons have been examined including the General Manager. The two workmen have pleaded that because of illness they did not attend the factory and claim to have sent word through their friends about their illness to the factory. They plead also that written applications for leave are not necessary and that there is no rule to that effect; if there is a rule it is not insisted on. They further allege that if there are Standing Orders justifying their dismissal, they were unaware of the same.

5. It has been proved that Babu Shetty was Secretary of the Labour Union during the strike which preceded his dismissal while Ganappa was an active member of the Union and they were always together. Thus if misconduct on their part, i.e., continuous absence without leave is not proved it has to be held that there is room for suspicion of victimisation.

6. That the two workmen were absent without leave during the same period is not in dispute. They contend that it is not usual to apply for leave. That this is not correct is clear from the fact that the employer has produced through M.W. 3 a whole file of leave applications ranging from 13th August 1948 to 31st May 1950. Neither side was anxious that the same should be exhibited. What is even more to the point is that Babu Shetty, the erstwhile Secretary has himself applied on 23rd December 1949 for leave, i.e., some time prior to the absence without leave which resulted in his dismissal. That application of his is entirely in handwriting in pencil in the local language and is Exhibit M-11. It was even then translated and put up before the Group Manager, Mr. Fowler who directed him to report himself to the Company's Doctor for treatment. Thus it will not avail Babu Shetty or Ganappa to say that he was not aware of other workmen submitting leave applications or that he did not know that he had to apply in writing for leave.

7. Rule 22 (*f*) of the Standing Orders for operatives is relied on in support of the present dismissal. It reads so far as it may be necessary for the disposal of the instant case thus and the book has been filed as Exhibit M-12 in connected Industrial Dispute No. 8 of 1950.

"A Workman may be dismissed without notice if he is found to be guilty of misconduct. No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. In awarding punishment under this Standing Order, the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order made by the Manager shall be supplied to the workman concerned. The following acts or omissions will be treated as misconduct.

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[redacted]LANEOUS.

DEVELOPMENT DEPARTMENT

G.O. No. 724, 16th February 1951

Labour—Disputes—Dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore—Award of the Industrial Tribunal, Coimbatore—Published..

READ—the following papers:—

I

G.O. Ms. No. 3573, Development, dated 8th September 1950.

II

From the Industrial Tribunal, Coimbatore, dated 9th February 1951, No. I.D. 8-C of 1950.

BEFORE THE INDUSTRIAL TRIBUNAL, COIMBATORE.

PRESENT:

SRI P. V. KRISHNASWAMI, B.A., B.L.,
Industrial Tribunal.

INDUSTRIAL DISPUTE No. 8-C OF 1950.

[In the matter of the dispute between the workers and the Management of the Commonwealth Tile Factory, Kudroli, Mangalore. (Vide G.O. Ms. No. 3573, Development, dated 8th September 1950.)]

Messrs. M. S. Menon, M.A., BAR.-AT-LAW and G. B. Pai, M.A., B.L., Advocates, Ernakulam—*For the Management.*

Sri B. S. Bhaskar Rai, B.A., B.L., Advocate and President, the Commonwealth Tile Workers' Union, Mangalore—*For the workers.*

AWARD.

Reference for adjudication of the question of the right of Sri Babu Shetty and Sri Ganappa, two employees of the Commonwealth Tile Factory, Kudroli, Mangalore, for reinstatement or gratuity.

1. The statement of the two workmen is to the effect that they have put in services respectively of 16 and 28 years, that there was no question of filing or sending any leave application because such was not the practice; the fact that they had to submit such applications was not intimated to them; that even to this day leave applications are not insisted upon. However, in fact they sent word through friends regarding their illness. The Standing Orders were not given to them or brought to their knowledge. They have been dismissed merely because they were office-bearers of the Union.

2. The employer's statement runs that the two workers were discharged from service with effect from 17th March 1950, for absence without leave; they were given an adequate opportunity to submit their explanation; punishment was awarded only after due enquiry. The Company's Standing Orders have been followed.

3. The point for consideration is that set out in the reference, viz., are Babu Shetty and Ganappa entitled to be reinstated in service or eligible for gratuity equivalent to 15 days' wages or to any lesser amount for each year of service?

4. Babu Shetty and Ganappa have examined themselves while on behalf of the employer three persons have been examined including the General Manager. The two workmen have pleaded that because of illness they did not attend the factory and claim to have sent word through their friends about their illness to the factory. They plead also that written applications for leave are not necessary and that there is no rule to that effect; if there is a rule it is not insisted on. They further allege that if there are Standing Orders justifying their dismissal, they were unaware of the same.

5. It has been proved that Babu Shetty was Secretary of the Labour Union during the strike which preceded his dismissal while Ganappa was an active member of the Union and they were always together. Thus if misconduct on their part, i.e., continuous absence without leave is not proved it has to be held that there is room for suspicion of victimisation.

6. That the two workmen were absent without leave during the same period is not in dispute. They contend that it is not usual to apply for leave. That this is not correct is clear from the fact that the employer has produced through M.W. 3 a whole file of leave applications ranging from 13th August 1948 to 31st May 1950. Neither side was anxious that the same should be exhibited. What is even more to the point is that Babu Shetty, the erstwhile Secretary has himself applied on 23rd December 1949 for leave, i.e., some time prior to the absence without leave which resulted in his dismissal. That application of his is entirely in handwriting in pencil in the local language and is Exhibit M-11. It was even then translated and put up before the Group Manager, Mr. Fowler who directed him to report himself to the Company's Doctor for treatment. Thus it will not avail Babu Shetty or Ganappa to say that he was not aware of other workmen submitting leave applications or that he did not know that he had to apply in writing for leave.

7. Rule 22 (*f*) of the Standing Orders for operatives is relied on in support of the present dismissal. It reads, so far as it may be necessary for the disposal of the instant case thus and the book has been filed as Exhibit M-12 in connected Industrial Dispute No. 8 of 1950.

"A Workman may be dismissed without notice if he is found to be guilty of misconduct. No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. In awarding punishment under this Standing Order, the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order made by the Manager shall be supplied to the workman concerned. The following acts or omissions will be treated as misconduct.

* * * * * *

22 (*f*). Habitual absence without leave or absence without leave for more than three consecutive working days without sufficient cause."

8. That Babu Shetty was absent without leave from 28th February to 15th March 1950, i.e., for more than three consecutive days is not disputed; likewise Ganappa from 22nd February to 14th March 1950. Absence thus without leave for more than three consecutive working days is admitted The next question is whether the absence was without sufficient cause.

9. The only cause now alleged in common is illness and there is absolutely no proof thereof. Not even corroborative oral testimony is forthcoming. What is definitely against the allegation of illness is that on 6th March 1950 during the period of continued absence, both these workmen were hale and healthy enough to walk to the factory to receive their pay for February. Even thereafter they both continued absent. They were not ill to receive their salary but they affected illness for a long period both before and after that date on which they received their salary. Thus sufficient cause is not made out.

10. They were given due notice to explain and their explanations have been recorded in Exhibits M-2 and M-3 by the then Group Manager whose interpreter then was Mr. Karkada, M.W. 1 while the Head Maistry, M.W. 2 was also present. Ganappa then said that he was attended to by some outside native doctor whose name, however, he did not know. He said that he sent word through his wife—though his statement mentions it was a friend—to the maistry and though his wife is still a work-woman in this factory she has not now been examined. Babu Shetty's statement on 16th March 1950 was to the effect that he did not know it was necessary to send a leave application. He did not inform anyone when he was ill and does not cite as a witness the friend through whom according to his written statement he sent word to the factory about his illness. In all these circumstances of this case, there has been absolutely no justification

for the long absence without leave of these two prominent members of the Labour Union. Ganappa had been earlier suspended on 13th May 1949 for inciting on 7th May 1949 whilst on the premises operatives to strike work. He was suspended for 2½ days. He was warned then that any repetition of misconduct will ensure dismissal. Both these workmen have merely abused their position as office-bearers of the Union, and have attempted to set a bad example to the other workmen thereby undermining discipline and creating a set-back for production. The dismissal in both these cases is clearly correct and I so find. They are not entitled to reinstatement.

11. Babu Shetty is now running a small hotel and Ganappa is working in another tile factory. The issue raises the question of the gratuity that they may be entitled to. Ganappa has put in much more than 22 years of service and a joint statement Exhibit M-12 records the same. Exhibit M-12 is the result of the General Manager's astonishingly thorough and perfectly fair investigation of his registers maintained and preserved with astounding regularity during all these long years. There is a break in Ganappa's service between 27th March 1935 and 1st June of that year but it is nothing serious and should be condoned in a case of [illegible]pe. The employer urges that under the rules now in operation of which a copy has been available the grant of gratuity is purely discretionary with his Board in England and is to be awarded only in the case of persons with a record of good conduct and satisfactory service. He urges that there is no justification for grant of gratuity in a case of dismissal for misconduct even though the workman has served for very much more than 22 years. Though these contentions are *prima facie* acceptable and without desiring to create a precedent and solely on the facts of this case I am inclined to award only Ganappa gratuity at the rate of 2 rupees per year of service plus 100 per cent dearness allowance as he is an employee about 46 years of age. Regarding Babu Shetty, his period of service is only about 13 years and he is not entitled to any gratuity and I so find. The gratuity payable to Ganappa will be paid within three months of the publication of this award.

12. There will be no order as to costs.

Coimbatore,
3rd February 1951.

P V. KRISHNASWAMI,
Industrial Tribunal.

Order—No. 724, Development, dated 16th February 1951.

Whereas the award of the Industrial Tribunal, Coimbatore in respect of the industrial dispute between the workers and the management of the Commanwealth Tile Factory, Kudroli, Mangalore, has been received;

Now, therefore, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), His Excellency the Governor of Madras hereby directs that the said award be published in the *Fort St. George Gazette.*

(By order of His Excellency the Governor)

J. M. LOBO PRABHU,
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DEVELOPMENT DEPARTMENT

G.O. No. 725, 16th February 1951

Labour—Disputes—Dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore—Award of the Industrial Tribunal, Coimbatore—Published.

READ—the following papers :—

I

G.O. Ms. No. 1315, Development, dated 31st March 1950.

II

From the Industrial Tribunal, Coimbatore, dated 9th February 1951, *No. I.D.* 8 of 1950.

BEFORE THE INDUSTRIAL TRIBUNAL, COIMBATORE.

PRESENT :

SRI P. V. KRISHNASWAMI, B.A., B.L.,
Industrial Tribunal.

INDUSTRIAL DISPUTE No. 8 OF 1950.

[In the matter of the dispute between the workers and the Management of the Commonwealth Tile Factory, Kudroli, Mangalore (vide G.O. Ms. No. 1315, Development, dated 31st March 1950.)]

Messrs. M. S. Menon, M.A., Bar.-at-Law and G. B. Pai, M.A., B.L., Advocates, Ernakulam—*For the management.*

SRI B. S. Bhaskar Rai, B.A., B.L., Advocate and President, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore—*For the workers.*

AWARD.

Reference to adjudicate whether the dismissal of Sri Omaya Poojari and Sri Daniel Prabhakar by their employer, the Commonwealth Tile Factory, Kudroli, Mangalore, was justified and if not, whether they should be reinstated.

1. The two workers are represented by their Union whose President Sri Bhaskar Rai, Advocate, has appeared for them now as at all earlier stages.

2. Both the parties were asked to file a full and clear statement of their case by 26th April 1950. On 24th April 1950, the President of the Union filed the statement on behalf of the Workers' Union and it is safe to say that it mentions nothing with regard to the impropriety, illegality or unjustifiability of the dismissals of the two employees in question. It runs into four pages and many paragraphs dealing mainly with the reinstatement of some other workmen dismissed before a strike, the wages for the strike period, an increase in the basic pay and dearness allowance, bonus, amenities to women workers, the difficulties of sweepers, the inconvenience felt at the racks and at the fire departments, skilled workers, clay stackers and holidays. It makes no reference whatever to these two employees in particular.

3. The employer's counsel obtained an extension of time to file his written statement. It is dated 9th May 1950, and urges that the two workmen were dismissed with effect from 14th October 1949 for wilful insubordination and refusal to carry out the lawful and reasonable orders of the Factory Manager; they had been given a charge-sheet in writing and afforded an opportunity to explain. They had been suspended on a prior occasion for misconduct and the same was taken into consideration in awarding a punishment to them, viz., dismissal. It is imperative in the interests of discipline inside the factory.

4. My learned Predecessor framed the following issue and communicated it to both parties :—

(1) Whether the two workmen, viz., Sri Omaya Poojari and Sri Daniel Prabhakar were dismissed on just and proper grounds and after due enquiry and if not should they be reinstated or given any other relief?

5. The advocates for the employer urged by a letter, dated 22nd May 1950, for the deletion from the issue of the words "if not whether they should be reinstated". On 3rd June 1950, the President of the Union wrote that the Workers' Union had not received till then the terms of the reference to the Tribunal and that "if the terms of the reference is only regarding the dismissal of two workers, the adjudication will be of little use to them." They had represented to the Labour Commissioner that their grievances should be redressed in the matter of wages, that a copy of the terms of reference should be forwarded to them, that issues should be framed regarding increase in basic wages, etc., that the matter should be taken up with Government regarding the terms of the reference. A reply was sent that issues can be and have been framed only on the terms of the reference and at best can be only germane to the points involved therein. No further statement was filed nor was leave asked therefor.

6. On 8th July 1950, the Tribunal received from the President of the Workers' Union a copy of a letter, dated 5th July 1950, addressed by him to the Commissioner of Labour. It complained that though he had laid specific stress on the question of increase of wages, to bring it on a par with the wages in other factories in Mangalore, the Commissioner of Labour seemed "to have referred only the matter of dismissal of two workers to the Industrial Tribunal." He added, "I am afraid we cannot be a party to such references and I have already intimated the facts to the Tribunal with copies to you and the Hon'ble Minister for Labour. Otherwise we will be wasting unnecessarily State's money on the present reference."

7. Notwithstanding all the foregoing the two employees have by their counsel participated now in the enquiry, cross-examined the four witnesses for the employer and have examined themselves.

8. The employer relies upon Exhibits M-1 to M-14 while the workmen rely on Exhibits W-1 to W-5. Exhibit M-9, dated 13th October 1949, from Mr. Hopkins (management's witness No. 4) to Mr. Fowler, the then General Group Manager, who has since retired from service sets out the incidents leading to the dismissal of these two workmen. It states that No. 1 press had not started work at 8 o'clock that morning due to pallets being not available that morning. To these two tile receivers of No. 1 press, it was pointed out that a big stock of pallets had accumulated at the press immediately opposite and that the same could be used. After some hesitation the workmen had the pallets transferred but 15 minutes production time was lost. Mr. Hopkins then informed these two workmen through the head fitter, Benjamin Maben (management's witness No. 2) that he wished to see them in his office at their break time, 9-30 a.m. Exhibit M-9 continues "they replied to the effect that if I wanted to convey anything to them I should do so through their vakil presumably Bhaskar Rai now the Union Secretary. At 9-30 I sent out for them but again they refused to come to the office giving the same reason as before." These two workers had given trouble previously and had been suspended for three days in May 1949 with a final warning in writing. Mr. Hopkins recommended adoption of strong and stern measures to suppress such acts of insubordination lest they, should assume impossible proportions. He attributed the non-co-operative attitude existing amongst the press room people to their chagrin at the installation of mechanical belt conveyers to carry pallets thereby minimizing human labour and head-loads.

9. Thus addressed by Exhibit M-9, Mr. Fowler, the Group Manager addressed the very next day, 14th October 1949, Mr. Kruger who was acting General Manager at Kozhikode during the absence of Mr. Burnett (M.W. 1) on leave. Exhibit M-4 taken with the other correspondence to be adverted to explains what took place on 14th October 1949 and after. It refers to instructions by telephone by Mr. Kruger to Mr. Fowler on the 13th October agreeably to which Mr. Fowler issued on 14th October 1949, Exhibits W-1 and W-2 to Omaya Poojari and Daniel Prabhakar informing them that it had been brought to his notice that each of them had been guilty of wilful insubordination and disobedience to lawful orders of their Manager on 13th October 1949 and that they were thereby given an opportunity to explain their case to Mr. Fowler at 4 p.m. that day at his office.

10. At 4 p.m. both these workmen appeared before Mr. Fowler and he took down their joint explanation referred to and set out in Exhibit M-4 in detail. They told him that No. 1 press had not worked on the afternoon of 12th October

and when they came to work on 13th morning, there were no pallets to work No. 1 press. The Manager (Mr. Hopkins) instructed them to get pallets from No. 4 press where they were available. They got them for No. 1 press. Omaya Poojari first told Mr. Fowler that this was at 8-15 a.m. but was corrected by Daniel Prabhakar into 7-45. They took about 30 pallets but did not start work. He does not know the time but it was before 8 o'clock. He was told by Mr. Hopkins through the head fitter as interpreter to come to the office at 9-30 a.m. but they replied they will not do so since some time earlier they had told the press maistri that they wanted to see the Manager; the Manager Mr. Hopkins had then replied that there was no necessity. They then had wished to see the Manager in regard to the working at the mechanical conveyors and at the time of their request to see the Manager work had been stopped at the factory. At 9-30 a.m. on the 13th, they were again asked by the head fitter to see the Manager and again they refused for the same reason as before. They made a final statement that the vakil who is in charge of the Union may be asked about them. Finally they both refused to sign their explanation which was however attested by the interpreter (head clerk) Karkada, M.W. 3, and the head maistri B. Mohamed. Mr. Fowler himself has written the original entirely in his own handwriting. He thereupon considered that there was sufficient justification to order their dismissal relying upon rule 22 (a) of their Standing Orders and therefore passed an order of dismissal evidenced by Exhibits M-7 and M-8 on the 14th October 1949. The original orders of dismissal were handed over to them and the terms thereof were interpreted by the head clerk in the presence of the head maistri and Mr. Hopkins. Mr. Maben, the head fitter has also now been examined with regard to the incidents on the morning of the 13th and corroborates Mr. Hopkins and Exhibit M-9.

11. Sri Maben as M.W. 2 proves his statement, Exhibit M-3, dated 14th October 1949. Maben states there that when Mr. Hopkins directed the tile receivers, viz., Omaya Poojari and Daniel Prabhakar to arrange to take the pallets from No. 4 press they took the whole thing as a joke and did not act. Mr. Hopkins directs Sri Maben to inform these two workmen to see him in his office at 9-30 a.m. but when Sri Maben told them so they replied "the Manager need not talk to us and if he wants anything, he can do so through our vakil." At 9-30 a.m. when he asked these workmen to go to the Manager they gave the same reply.

12. It is necessary now to advert to certain prior incidents which find reference in these letters and have been now spoken to in detail by Mr. Hopkins. He installed mechanical conveyers in that factory in the first week of September 1949 and the labourers were antogonistic to such an innovation and stopped work on 3rd September 1949. A deputation wanted to see him but he refused to receive the deputation since the Standing Orders of the factory did not permit an interview of that nature when men had struck work. Since on that occasion, Mr. Hopkins refused to receive the men among whom were these Omaya Poojari and Daniel Prabhakar, the incident of 13th October more than a month later arose. They refused to remove the pallets as if to express their derision at the mechanical conveyor. They refused to obey the call of the Manager to his office because the Manager had on 3rd September 1949 refused to receive a deputation of theirs.

13. After this dismissal on 14th October 1949, Mr. Bhaskar Rai would appear to have received a letter, dated 25th November 1949, from the General Manager and it is referred to in Exhibit M-1 wherein the Labour Officer, Kozhikode, on 30th November 1949, requested the General Manager to let him know the circumstances under which the two workers were removed from service. The General Manager's reply, dated 30th November 1949, to the Labour Officer is Exhibit M-2. Subsequent negotiations failed since the employer felt that any reinstatement of these men would grossly impair discipline and output.

14. On 24th December 1949, Mr. Bhaskar Rai, on behalf of the Union gave the General Manager a notice of strike setting out a demand for redress over 26 items the first being the dismissal of these two workmen. Exhibit W-5 is the reply of the General Manager refusing to restore these two men and replying to all the other items. The question is whether in view of the foregoing these two workmen were dismissed illegally.

15. Sri Omaya Poojari as W.W. 1 has admitted that because Mr. Hopkins had refused to receive the workmen ten days earlier, he and Prabhakar refused to see him on the date in question. Daniel Prabhakar as W.W. 2 has also admitted that Mr. Hopkins had refused to receive them earlier when they wanted to see him to express their grievances and that is one of the reasons why he did not obey Mr. Hopkin's call to the office on 13th October 1949 though he knew that according to the rules he was bound to comply.

16. If the matter stood there, there is absolutely no case for the workmen. To order their reinstatement would be against all interests and would be upholding contumacious insolence and impudent insubordination. The matter however has been complicated by new pleas being advanced for the first time after this enquiry began. Comment has been already made upon the statement filed on behalf of these two workmen in this case. It does not refer to any of the circumstances leading to their dismissal, to offer any explanation or excuse. In such circumstances, normally in a Court of Law, they would not be permitted to put forward any case not specifically pleaded but allowing some latitude for their alleged illiteracy and their allegations that they had entrusted their entire case to their President and counsel. I permitted them to state whatever they wanted to urge. The result had been that they made personal allegations against Mr. Hopkins to the effect that he used to treat them in an unhuman fashion threatening them with a stick. During his deposition Omaya Poojari has stated that on 13th October 1949 he was pushed by Mr. Hopkins while Daniel Prabhakar who did not corroborate Omaya Poojari has added that Mr. Hopkins waved a stick or cane at him. It is significant that at no time earlier during the history of these disputes was this obvious afterthought of a story put forward. When the President of their Union issued a notice of strike he did not refer to this. When these men were examined by Mr. Fowler on the very next day they did not tell him anything about these matters though they concede that Mr. Fowler is a good man against whom they have nothing to urge. Yet again when the Labour Officer went into these matters they did not put forward this story of Mr. Hopkins going about with a stick to frighten these men. This concoction has to be dismissed straightaway as ridiculous.

17. Again it had been suggested during trial that the head fitter Sri Maben did not interpret properly what Mr. Hopkins told the workmen and vice versa. Similar aspersions have been made against Mr. Fowler's record of the statement of these men on 14th October 1949. These aspersions had not been put forward on any earlier stage during these disputes and are not entitled to any acceptance. Mr. Hopkins has denied that he went about with a stick to wave the same at his workmen or to indicate any semblance of violence towards them. To the same effect is the evidence of Sri Maben the head fitter and Sri Karkada, the head clerk. In fact it is obvious that it had been realized during the earlier stages following this reference that these two workmen who have found employment elsewhere had no case whatever, because their President's letter to this Tribunal and to the Labour Commissioner would justify no other conclusion.

18. For all the foregoing reasons I hold and find that these two workmen were rightly dismissed on just and proper grounds and after due enquiry and that the same is fully justified. No question of reinstatement or other relief arises.

Coimbatore,
3rd February 1951.

P. V. KRISHNASWAMI,
Industrial Tribunal.

Order—No. 725, Development, dated 16th February 1951.

Whereas the award of the Industrial Tribunal, Coimbatore, in respect of the industrial dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore, has been received;

Now, therefore, in exercise of the powers conferred by section 17 of the *Industrial Disputes Act, 1947* (Central Act XIV of 1947), His Excellency the Governor of Madras hereby directs that the said award be published in the *Fort St. George Gazette.*

(By order of His Excellency the Governor)

J. M. LOBO PRABHU,
Secretary to Government.

To the Superintendent, Government Press, for publication.
" Commissioner of Labour (20 copies).
" Industrial Tribunal, Coimbatore.
" Management of the Commonwealth Tile Factory, Kudroli, Mangalore.
" Secretary, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore.
" District Magistrate of South Kanara.

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